



ORGANIZATION FOR THE PROTECTION
AND ADVANCEMENT OF SMALL
TELEPHONE COMPANIES

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Federal Communications Commission
Office of Secretary

In the Matter of

Rulemaking to Amend Parts 1, 2, 21, and 25
of the Commission's Rules to Redesignate
the 27.5-29.5 GHz Frequency Band,
to Establish Rules and Policies for Local
Multipoint Distribution Service and for
Fixed Satellite Services

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CC Docket No. 92-297

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REPLY COMMENTS OF
THE ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES

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August 22, 1996

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REPLY COMMENTS OF
THE ORGANIZATION FOR THE PROMOTION AND
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I. INTRODUCTION

Numerous parties filed comments on August 12, 1996 in response to the Federal Communications Commission's (FCC or Commission) Fourth Notice of Proposed Rulemaking¹ regarding rules and policies for Local Multipoint Distribution Service (LMDS) and for fixed satellite services. The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits its reply comments in response to the comments on this topic of paramount importance to rural areas.

¹In the Matter of Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.8 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, CC Docket No. 92-297, Fourth Notice of Proposed Rulemaking, FCC 96-311 (July 22, 1996) (NPRM).

OPASTCO is a national trade association of more than 450 independently owned and operated telephone companies serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over two million customers with both wireline and wireless technologies. OPASTCO members are committed to providing their rural customers the most efficient means of broadband delivery, including LMDS. Many OPASTCO members are considering LMDS as a possible broadband solution for their remote areas and their proposed exclusion is contrary to the public interest.

II. THE COMMISSION SHOULD NOT RESTRICT INCUMBENT LECS AND CABLE COMPANIES FROM LMDS AUCTIONS BASED ON THE FALLACIOUS "WAREHOUSING" ARGUMENT

Numerous commenters offer the "warehousing" argument that incumbent local exchange carriers (LECs) will purchase LMDS licenses "at auction for billions of dollars"² and "effectively 'warehouse' LMDS licenses."³ This argument is based upon the assertions of companies such as CellularVison USA which boldly predicts that "the possibility of anti-competitive conduct by telcos or major MSOs is real enough to warrant serious restrictions..."⁴ and SkyOptics, which asserts that "there is a substantial probability that incumbent LECs and cable operators would acquire LMDS licenses as an 'insurance policy.'"⁵ Mere

²SkyOptics, Inc. comments at p. 5.

³WebCel Communications, Inc. comments at p. 4.

⁴CellularVision USA, Inc. comments at p. 12.

⁵SkyOptics comments at p. 6.

"possibility" and "probability" are no reason to bar LECs from LMDS competition. As Ameritech concurs, "the Commission should not ignore its own continuing conclusion that no exclusions of specific classes of potential LMDS service providers are justified."⁶

The record clearly shows that "[m]ost commenters last week in Common Carrier docket 92-297 opposed possible restriction on telco and cable TV industry participation in LMDS."⁷ Many commenters pointed out the undeniable fact that the "warehousing" canard is "premised on a 'too improbable' scenario, namely that cable operators are going to spend tens or hundreds of millions of dollars to purchase LMDS licenses at auction and not offer service, in the hope that this strategy would deter a potential video competitor from entering."⁸ Another reason most commenters opposed the possible LEC and cable restriction is that it is contrary to the pro-competitive intent of the Telecommunications Act of 1996. The Act mandates a "...pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition..."⁹ Those

⁶Ameritech comments at p. 2.

⁷Telecommunications Reports at page 25 (August 19, 1996).

⁸National Cable Television Association (NCTA) comments at p. 2.

⁹See Telecommunications Act of 1996, Conference Report, S. Rep. 104-230, Joint Explanatory Statement at 113, February 1,

who would use the oxymoronic argument that "[e]ligibility restrictions will promote competition"¹⁰ are misconstruing the intent of the Act. The entire industry is in the process of being thrown wide open, with industry barriers and restrictions disappearing, and a multitude of new, competing technologies being provided. The massive interconnection docket (CC Docket No. 96-98) is but one example of this trend. "Any effort to prohibit LECs from participating in auctions for LMDS licenses in their geographic regions would be contrary to Congressional intent"¹¹ and to the current trend.

III. RESTRICTIONS ON RURAL LECs ARE ANTICOMPETITIVE AND WOULD IMPEDE THE PROVISION OF LMDS IN RURAL AMERICA

Irrespective of the spurious "warehousing" argument and various interpretations of the 1996 Act, any restriction on rural LEC participation in LMDS auctioning or partitioning will severely retard, if not eliminate, the growth of LMDS services in remote, rural regions. OPASTCO agrees with the National Telephone Cooperative Association (NTCA) when it states that "[u]se of LMDS in conjunction with other broadband technologies will further the universal service goal of comparable access to advanced services in rural areas. The most effective way to ensure that rural areas receive the service is to encourage

1996.

¹⁰Competition Policy Institute comments at p. 2.

¹¹United States Telephone Association (USTA) comments at p. 3.

rather than prohibit rural LECs from participating in LMDS."¹² Additionally, rural commenters¹³ point out that prohibiting rural LEC participation would violate Section 309(j) of the Communications Act, as amended. OPASTCO urges the Commission to continue to promote "the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those in rural areas, without administrative or judicial delays."¹⁴ As NTCA affirms, "[o]ther licensees are unlikely to place a high priority on providing service in rural areas."¹⁵ Accordingly, the Commission should, as it has previously determined¹⁶, conclude that there is no basis for excluding incumbent telephone companies from the opportunity to provide LMDS in their regions, especially rural regions.

Concerns about spectrum "warehousing" are not applicable to rural LECs. As NTCA declares, rural LECs "have no incentive to retard the delivery of service to their own areas or to warehouse spectrum to prevent others from entering the local exchange market or competing for the delivery of broadband services to these sparsely populated areas that are the least attractive to

¹²National Telephone Cooperative Association (NTCA) comments at p. 3.

¹³NTCA comments at p. 3; and The Ad Hoc Rural Telecommunications Group comments at p. 5.

¹⁴47 U.S.C. Section 309(j) (3) (a)

¹⁵NTCA comments at p. 2.

¹⁶See Third Notice, 11 FCC Rcd 53 (1995); and NPRM at para. 108.

competitors."¹⁷ It would be economic suicide for a small rural telephone company to tie-up vast amounts of capital in order to warehouse this spectrum.

IV. CONCLUSION

There are simply too many competing technologies in the rapidly expanding marketplace for LECs to be excluded from the provision of any one of them, including LMDS. For example, cable, cellular, fixed-wireless, DBS, wireless cable, narrowband PCS, and broadband PCS are all competing with LMDS. No incumbent or competitor is going to spend scarce capital in a vain attempt to forestall competition. The flawed logic of the "warehousing" argument crumbles under its own weight.

To use the words of the Competition Policy Institute, "[c]onsumers will benefit most from a policy that gives the LMDS license in each market to an entity that has the maximum incentives to develop both the video and telephony services that LMDS is capable of providing."¹⁸ The policy of denying LEC and cable participation in LMDS is contrary to this public interest result. Additionally, the record shows that "[r]ural telephone companies and cable operators have an incentive to use LMDS to its highest and best use"¹⁹ and should therefore be included.

"The Commission and interested parties have previously considered and concluded that LEC and cable operator

¹⁷NTCA comments at p. 3.

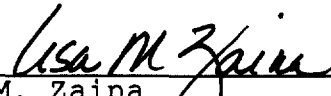
¹⁸Competition Policy Institute comments at p. 8.

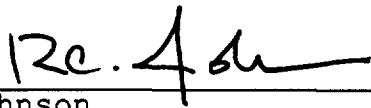
¹⁹Ad Hoc Rural Telecommunications Group comments at p. 5.

participation in LMDS will serve the public interest."²⁰ Nothing has changed to modify this view. The "warehousing" suppositions are groundless and the pro-competitive mandate of the 1996 Act only confirms full participation. Accordingly, rural LECs must be allowed to participate in the provision of LMDS.

Respectfully submitted,

**THE ORGANIZATION FOR THE
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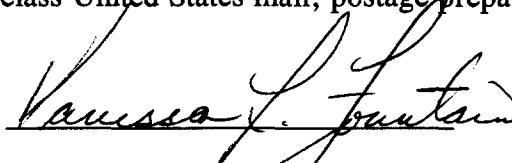
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²⁰US West comments at p. 2.

CERTIFICATE OF SERVICE

I, Vanessa L. Fountain, hereby certify that a copy of OPASTCO's reply comments was sent on this, the 22nd day of August, 1996 by first class United States mail, postage prepaid, to those listed on the attached sheet.


Vanessa L. Fountain

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